

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUBIN LAMONT STONE,

Plaintiff,

Case No. 1:10-cv-423

v

HON. JANET T. NEFF

GLORIA M. PERRY, et al.,

Defendants.

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants Vander Velden, Hamilton, and Gracik filed a Motion for Dismissal Based on Plaintiff's Failure to Exhaust Administrative Remedies (Dkt 16). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending that this Court grant the motion (Dkt 32). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Dkt 33) and Defendants' Motion for Protective Order Staying Discovery (Dkt 19).

In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. Plaintiff's objections do not identify any factual or legal error in the Magistrate Judge's exhaustion analysis. Plaintiff asserts merely that "it is not his fault if the prisons [sic] grievance process is only there to give the illusion that he (prisoner) has some type of administrative avenue to remedy prison conditions complained of" (Dkt 33 at 1). The Court therefore denies the objections and adopts the Report and Recommendation to dismiss this action.

Accordingly, Defendants' Motion for Protective Order Staying Discovery (Dkt 19) is denied as moot.

A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 210-11 (2007). Therefore:

IT IS HEREBY ORDERED that the Objections (Dkt 33) are DENIED and the Report and Recommendation (Dkt 32) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Dismissal Based on Plaintiff's Failure to Exhaust Administrative Remedies (Dkt 16) is GRANTED, and Plaintiff's claims against Defendants Vander Velden, Hamilton, and Gracik are DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that Plaintiff's claims against Defendants Perry, Abdellatif, and Spitters are DISMISSED for failure to state a claim on which relief can be granted.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED, and the dismissal shall be counted as a strike for purposes of 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that Defendants' Motion for Protective Order (Dkt 19) is DENIED as moot.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Dated: May 9, 2011

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge